IN THE HIGH COURT OF JUDICATURE,

ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE EIGHTEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 117 of 2005

Between:

State of Andhra Pradesh, rep.by its Commercial Tax officer, Bhongiri, Nalgonda Dist.

..... PETITIONER

AND

M/s. SKS Drugs (P) Ltd., Kondamadugu village, Nalgonda District (IN LIQUIDATION), rep.by Official Liquidator, Kendriya Sadan, Koti, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction more particularly one in the nature of writ of Mandamus declaring the action of the Official Liquidator in not disposing the claim petition and releasing the sales tax dues of the Respondent company to the petitioner state is illegal, arbitrary and without jurisdiction and contrary to section 16(c) of the APGST Act and consequently declare that the sales tax will have the first charge over the properties of the defaulting dealer in the light of section 16(c) of the APGST Act and section 17 of the CST Act and further direct the official Liquidator to remit the sales tax arrears of the Respondent company to the petitioner state from the sale proceeds of the properties of the Respondents company forthwith and pass such other order or orders.

Counsel for the Petitioner: MR.K.RAJI REDDY(SPL.SC FOR CT).

Counsel for the Respondent: OFFICIAL LIQUIDATOR.

The Court at the stage of admission made the following :

THE HON'BLE SRI JUSTICE M.H.S.ANSARI

AND

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

-

-

W.P.NO.117 OF 2005

-

-

ORAL JUDGMENT:

(Per the Hon'ble Sri Justice Ansari)

Having heard the learned counsel for the petitioner and also keeping in view the nature of relief prayed for, we are of the view that the proper course for the petitioner is to approach the Company Court by an appropriate application under the Companies Act.

Petitioner-State is seeking enforcement of its Statutory Charge under Section 16 (C) of the A.P.G.S.T. Act and Section 17 of the C.S.T. Act. It is not in dispute that the Company has been directed to be wound up and therefore, the proper course open to the petitioner is to file appropriate application before the Company Court. This is for the reason that the Official Liquidator, under the scheme of Companies Act, can act only in concurrence with or under the directions of the Company Court.

We therefore, not inclined to pass any orders, much less, as prayed for in the instant writ petition.

Writ petition is accordingly dismissed at admission stage with liberty to the petitioner to avail of such remedy as may be open to it at law in accordance with the

provisions contained under the Companies Act.

M.H.S.Ansari, J

T.Ch.Surya Rao, J

18th January, 2005.

mrk

To

1. The Commercial Tax officer, Bhongiri, Nalgonda District.
2. The Official Liquidator, Kendriya Sadan, Koti, Hyderabad.
3. Two CCs to the Special Standing Counsel for Commercial Taxes, High Court of A.P., Hyderabad. (OUT) CD copies.